

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P (NPD) No.328 of 2016
and
C.M.P. No.1737 of 2016

M.Gunaseelan .. Petitioner

Vs

S.Nagarajan .. Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order of Sub Court at Dharmapuri, dated 21.12.2015 in I.A.No.365 of 2015 in O.S.No.38 of 2006.

For Petitioner : Mr.P.Valliappan

For Respondent : Mr.I.Abarar Muhamad Abdullah

ORDER

This Civil Revision Petition is filed against the to set aside the fair and decreetal order of Sub Court at Dharmapuri, dated 21.12.2015 in I.A.No.365 of 2015 in O.S.No.38 of 2006.

2. The learned counsel appearing for the petitioner would submit that the petitioner filed the suit in O.S. No. 38 of 2006 for specific performance against the respondent herein. In the aforesaid suit, the respondent was set ex-parte and decree was passed on 10.11.2010. Thereafter, the respondent filed an application in I.A. No. 153 of 2012 to set aside the ex-parte decree. The said application was allowed. Again, the respondent was set ex-parte on 28.02.2013. Aggrieved by the same, the respondent filed an Interlocutory Application to condone the delay of 731 days in filing the application to set aside the ex-parte decree. According to the petitioner, though no sufficient reasons were stated in the affidavit filed in support of the petition, the court below allowed the application. According to the petitioner, the court below has passed the order without considering the objections raised by the petitioner.

3. The learned counsel for the petitioner further submitted that the order passed by the court below is a non-speaking order and hence the same is liable to be set aside and remanded to the court below to pass appropriate orders.

4. The learned counsel for the respondent would submit that the court below has granted an opportunity to the respondent to agitate the matter on merits. Therefore, the order of the court below is sustainable and the Civil Revision petition is liable to be dismissed.

5. Heard the submission of the learned counsel for both the parties and perused the material on record.

6. It is seen from the records that the respondent has filed the application to condone the delay of 731 in filing the application to set the ex-parte decree, on the reasoning that the defendant went abroad and so he could not appear before the court below on 28.02.2013 and in order to provide an opportunity to the parties, the court below has allowed the application. However, the aforesaid order has been passed without stating proper reasons and hence the order passed by the court below is liable to be set aside. Therefore, this Court is inclined to pass the following orders :

1. The order dated 21.12.2015 passed by the court below in I.A. No. 365 of 2015 is set aside and remanded to the Subordinate Court,

Dharmapuri, to be considered afresh and pass orders, in accordance with law, after providing opportunity to the parties concerned.

2. The Trial Court is directed to dispose of the Application, as expeditiously as possible, preferably on or before 30.06.2018.

7. The Civil Revision Petition is allowed, with the above direction. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

02.03.2018

Speaking / Non Speaking order

Index :Yes/No

[Issue order copy on 26.04.2018]
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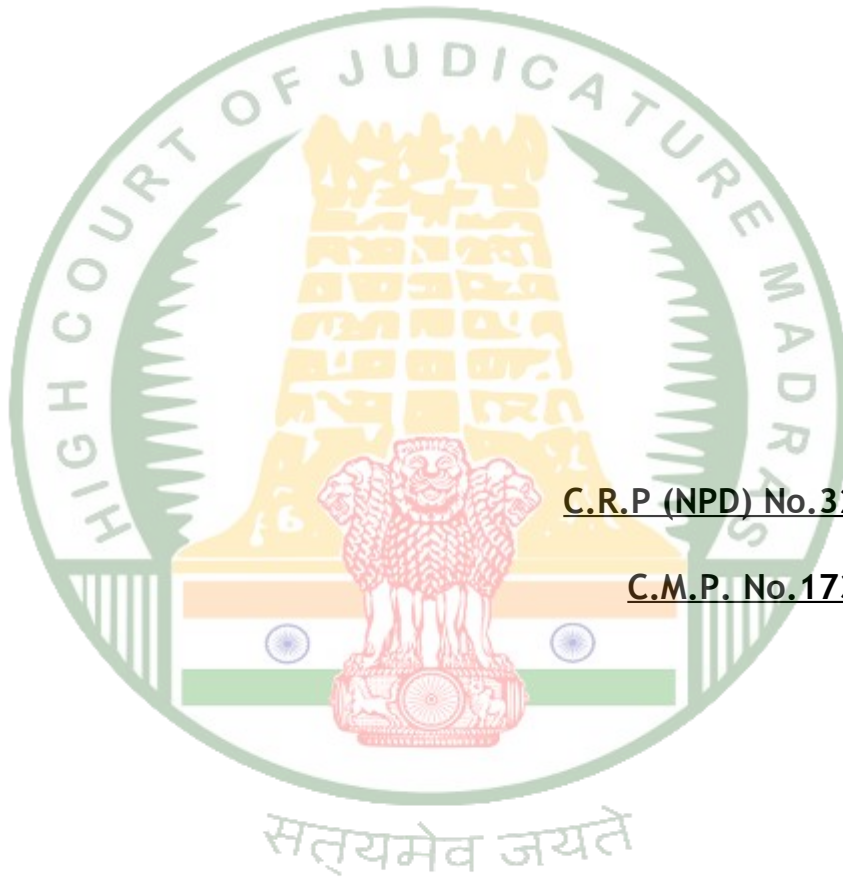
To

The Subordinate Court,
Dharmapuri.

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D. KRISHNAKUMAR J.,

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and
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